

REMARKS

In the Office Action of April 16, 2008, claim 5 was objected to because it recited "light emitting device of any claim 1." However, the applicant respectfully traverses the objection because in the preliminary amendment, filed on August 1, 2006, claim 5 was amended to clearly recite that "The lighting apparatus of claim 4, characterized in that the light emitting device of ~~any one of claims 1 through 3~~ claim 1 is used as said light emitting device."

Nevertheless, claim 5 has been amended to further clarify the feature of the invention and also to obviate the objection.

As for the non-statutory double patenting rejection asserted on page 2 of the Action, in accordance with 37 CFR 1.321(c), a terminal disclaimer will be filed to obviate such a rejection upon an indication that the claimed subject matter is allowable over the cited art.

On page 3 of the Action, claims 1-3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Tamaki et al. (US 2004/0135504) in view of Ueda et al. (Abs. 2073, 206th meeting, The Electrochemical Society).

Further, in paragraphs 13-20 of the Action, claims 5-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ellens (US 2003/0030368) in view of Tamaki as modified by Ueda, and claim 7 was rejected under 35 U.S.C. 103(a) as being unpatentable over Ellens in view of Tamaki as modified by Ueda and further in view of Wang (US 2002/0084745).

In response to the rejection(s) under 35 U.S.C. 103(a), the applicant respectfully claims a priority of Japanese patent Application No. 2004-041502, filed on February 18, 2004 in Japan. An English translation of the Japanese patent application and verification thereof are filed herewith for consideration.

Since Ueda was published on October 3, 2004, the priority date of the Japanese Patent application is earlier and antedates Ueda.

Therefore, Ueda cannot be a reference for the purpose of the rejection(s) under 35 U.S.C. 103(a).

Accordingly, the rejection(s) under 35 U.S.C. 103(a) are rendered moot.

In paragraph 10 of the Action, claims 4-7 were rejected under 35 U.S.C. 102(b) as being anticipated by Ellens et al.

Ellens discloses an illumination unit having at least one LED light source. In Table 1 of Ellens, a number of phosphors of the sialon type, which partially or completely convert the radiation generated by the LED, are shown.

In response to the rejection(s), claim 4 has been amended to further clarify the feature of the invention. Claim 4 now recites that the second fluorescent material mainly including a CaAlSiN₃ crystal phase.

As is clear from the disclosure of Ellens, said CaAlSiN₃ crystal phase is not taught or suggested.

Rejections under the 35 USC § 102 statute, are based on the premise that to anticipate a claim, each and every element of the claim must be shown in a single reference. When a claimed element cannot be found in the reference, the reference does not anticipate the claimed invention. Further, it is incumbent upon the Examiner to identify where in the reference each element may be found. Ex parte Levy, 17 U.S.P.Q.2d 1461 (Bd. Pat. App. Intrf. 1990).

Therefore, since Ellens does not disclose every and each element recited in the currently amended claim 4, Ellens does not anticipate claim 5 in the present invention.

Accordingly, all dependent claims which depend either directly or indirectly from claim 4 should stand allowable over Ellens or any combination of ellens and a secondary reference such as Tamaki, Ueda or Wang.

Also, claims 1-3, and 5-7 have been amended to further clarify the feature of the invention, and claims 8-14 have been newly filed.

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The Abstract has been amended to correct informalities.

Reconsideration and allowance are earnestly solicited.

One month extension of time is hereby requested. A credit card authorization form in the amount of \$120.00 is attached herewith for the one month extension of time.

Respectfully Submitted,

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